

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

OCTAVIAN REEVES v. HOWARD CARLTON, WARDEN

Appeal from the Criminal Court for Johnson County
No. 5140 Lynn W. Brown, Judge

No. E2007-02318-CCA-R3-HC - Filed November 25, 2008

The petitioner, Octavian Reeves, appeals from the trial court's order dismissing his petition for writ of habeas corpus. The State has filed a motion requesting that this court affirm the order pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petition fails to establish a cognizable claim for habeas corpus relief. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Octavian Reeves, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Attorney General and Reporter; Lacy Wilber, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

In March 2002, a Madison County jury convicted the petitioner of second degree murder. The trial court sentenced the petitioner to twenty-five years as a standard, Range I offender. On direct appeal, this court affirmed the conviction and sentence. See State v. Octavian Demetrius Reeves, No. W2002-01313-CCA-R3-CD, 2004WL115390 (Tenn. Crim. App. Jan. 22, 2004), app. denied (Tenn. May 24, 2004). The petitioner sought post-conviction relief and his petition was dismissed upon the trial court's finding that the petitioner failed to satisfy his burden of establishing his claims for relief by clear and convincing evidence. This court affirmed the judgment on appeal. See Octavian Demetrius Reeves v. State, No. W2005-02244-CCA-R3-PC, 2006WL2422704 (Tenn. Crim. App. Aug. 22, 2006), app. denied (Tenn. Dec. 18, 2006).

On August 2, 2007, the petitioner filed a petition for writ of habeas corpus in which he challenged the sentencing judgment as unlawful and void. The petitioner asserted that the trial court enhanced his sentence in violation of his Sixth Amendment right to jury trial as interpreted by the United States Supreme Court in Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004). On

September 11, 2007, the trial court dismissed the petition upon finding that it failed to establish either a void judgment or an expired sentence. The instant, timely appeal followed.

In Tennessee, the grounds upon which habeas corpus relief may be granted are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The writ will issue only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 222 Tenn. 50, 432 S.W.2d 656 (1968); State ex rel. Wade v. Norvell, 1 Tenn. Crim. App. 447, 443 S.W.2d 839 (1969). The purpose of the habeas corpus petition is to contest a void, not merely a voidable, judgment. State ex rel. Newsome v. Henderson, 424 S.W.2d 186, 189 (1969). A void, as opposed to a voidable, judgment is "one that is facially invalid because the court did not have the statutory authority to render such judgment." See Summers v. State, 212 S.W.3d 251, 256 (Tenn. 2007). A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. See Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). A court may summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petition does not state a cognizable claim. See Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004).

In Blakely, 542 U.S. at 301, 124 S. Ct. at 2536, the Supreme Court held that any fact other than that of a prior conviction used to enhance a defendant's sentence must be proven to a jury beyond a reasonable doubt. The petitioner's claim of an erroneously enhanced sentence is not cognizable in a habeas corpus case because the claim, even if proven, would render the judgment voidable, not void. See Ulysses Richardson v. State, No. W2006-01856-CCA-R3-PC, 2007WL1515162, at *3 (Tenn. Crim. App. May 24, 2007), app. denied (Tenn. Sept. 17, 2007)(stating that "even a valid Blakely claim renders a conviction voidable, not void, and is thus non-cognizable in habeas corpus review"). Additionally, this Court has repeatedly held that Blakely and its progeny did not create a new rule of law entitled to retroactive application in the context of a collateral, habeas corpus proceeding. See, e.g., Gary Wallace v. State, No. W2007-01949-CCA-R3-CO, 2008WL2687698, at *2 (Tenn. Crim. App. Jul. 2, 2008); Glen Cook v. State, No. W2006-01514-CCA-R3-PC, 2008 WL 821532, at *10 (Tenn. Crim. App. Mar. 27, 2008); Billy Merle Meeks v. Ricky J. Bell, Warden, No. M2005-00626-CCA-R3-HC, 2007WL4116486, at *7 (Tenn. Crim. App. Apr. 7, 2008). The petitioner has stated neither a claim of a void judgment, that is, one that the trial court was without authority to enter, nor one of an expired sentence. The trial court properly dismissed the petition.

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the petitioner has not established that he is entitled to habeas corpus relief. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

D. KELLY THOMAS, JR., JUDGE